

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS (“CITY”), REPEALING ORDINANCE NO. 05-01-12; ESTABLISHING THAT AN ANNUAL PERMIT AND LICENSE ARE REQUIRED AND ESTABLISHING FEES FOR APPLICATIONS FOR SUCH PERMITS AND LICENSES UNDER THE TEXAS ALCOHOLIC BEVERAGE CODE; REQUIRING A REVIEW OF THE PERMIT APPLICATION AND CERTIFICATION OF WET/DRY STATUS; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the City Council of the City of Frisco, Texas (the “City Council”) has previously adopted Ordinance No. 05-01-12 (Alcohol Fee Regulations) of the City establishing alcohol fee regulations; and

WHEREAS, the City Council has investigated and determined that additions, deletions and amendments to the Alcohol Fee Regulations should occur to allow the City of Frisco, Texas (“Frisco”) to more effectively regulate the sale of alcohol and comply with state law;

WHEREAS, the City Council has investigated and determined that in order to most effectively make the additions, deletions and amendments necessary, it is in the best interest of the citizen’s of Frisco to repeal Ordinance No. 05-01-12 in its entirety and replace it with this ordinance; and

WHEREAS, the City Council has investigated and determined that Ordinance No. 05-01-12 (Alcohol Fee Regulations), should be repealed in its entirety and this Ordinance adopted to regulate alcohol fees in Frisco.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Ordinance No. 05-01-12 Repealed. Frisco Ordinance No. 05-01-12 is hereby repealed in its entirety and replaced by this Ordinance. The effective date of the repeal discussed in this Section shall not occur until the effective date of this Ordinance at which time Ordinance No. 05-01-12 shall be repealed. Such repeal shall not abate any pending prosecution

and/or lawsuit or prevent any prosecution and/or lawsuit from being commenced for any violation of Ordinance No. 05-01-12, occurring before the effective date of this Ordinance.

SECTION 3: Permit Required and Annual Permit Fee Established. It shall be unlawful for any person to manufacture, distill, brew, import, transport, store for purposes of sale, distribute or sell any beer, wine or other alcoholic beverage within the City without first paying the appropriate fee to the City Secretary and obtaining a City permit to sell alcoholic beverages at a specific location. The fee shall be equal to one-half (1/2) of the fee charged by the State of Texas, as amended, for the particular license issued by the Texas Alcoholic Beverage Commission (“TABC”), except when said fee is waived according to the provisions of the Texas Alcoholic Beverage Code. Following payment of the fee and approval of the permit application, as set forth herein, the City Secretary shall issue a permit for that location for a period of one year. Such permit fee shall be paid to the City Secretary annually.

SECTION 4: Permit Application Review/Certificate of Wet/Dry Status

Prior to issuing a City permit to applicant for the proposed location, the City Secretary shall certify whether the location is located in an area that is wet and that the sale of alcoholic beverages at this location is not prohibited by Charter and/or ordinance. The City Secretary shall keep a record of all permits and certificate issued under this chapter.

SECTION 5: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinance shall remain in full force and effect.

SECTION 6: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Frisco hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 7: Penalty Provision. Any person, firm, corporation or entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding Five Hundred and 00/100 Dollars (\$500.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 8: No Change in Forums Created. Frisco hereby declares that it would not have passed any section of this Ordinance that changes the character of any non-public forum to a limited public forum or a designated/open public forum or changes the character of any limited public forum to a designated/open public forum, and that any section found to do so by a Court of competent jurisdiction shall be severed and considered repealed effective on the date of the Court's order/ruling.

SECTION 9: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by law the City Charter and by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, on this ____ day of _____ 2009.

Maher Maso, Mayor

**ATTESTED TO AND
CORRECTLY RECORDED BY:**

Jenny Page, City Secretary

APPROVED AS TO FORM:

Abernathy Roeder Boyd & Joplin P.C.
Courtney Kuykendall, City Attorneys